



Testimony of

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on

Reduction of Air Pollution from Ships

and

Ballast Water Management

before the

**Subcommittee on Coast Guard and Maritime
Transportation**

of the

**House Committee on Transportation and
Infrastructure**

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I. INTRODUCTION

Mr. Chairman and members of the Committee, thank you for the opportunity to testify before you today on these important environmental issues. My name is Donald O'Hare. I am Vice President of the World Shipping Council (the Council), a non-profit trade association representing international ocean carriers, established to address public policy issues of interest and importance to the international liner shipping industry. The Council's members include the full spectrum of ocean carriers, from large global operators to trade-specific niche carriers, offering container, roll-on/roll-off, car carrier and other international transportation services. They carry roughly 93% of the United States' imports and exports transported by the international liner shipping industry, or more than \$500 billion worth of American foreign commerce each year. A list of our members is attached to my testimony.

The World Shipping Council and the Chamber of Shipping of America, also before you today, are both members of a large coalition representing all sectors of the maritime industry and maritime labor. For five years the coalition has been advocating ratification of the MARPOL Annex VI treaty regulating vessel air emissions and seeking an effective ballast water management system.

The 2004 report by the U.S. Commission on Ocean Policy raised the awareness level, both in government and the private sector, of the fragile nature of our oceans and coastlines. We applaud this Committee's leadership in dealing with these two issues of critical importance to the long-term wellbeing of those invaluable resources.

II. MARPOL ANNEX VI

Mr. Chairman, the shipping industry thanks you for holding the first congressional hearing on implementing legislation for the MARPOL Annex VI treaty which internationally regulates air emissions from large oceangoing ships. The Senate gave its advice and consent to ratification of the treaty this past April and it is appropriate that Congress enact the implementing legislation during this session.

Shipping is an inherently international business, with more than 30,000 vessels flying the flags of more than 100 countries and serving the commerce of virtually every nation in the world. International regulation of vessel air emissions is a critical and timely issue -- particularly here in the United States and in other major trading countries which host large numbers of vessels each year in their ports and waters. According to the U.S. Maritime Administration, commercial ships made more than 55,000 calls at U.S. ports last year. U.S. ratification of MARPOL Annex VI will be a major first step toward improving vessel air emissions and air quality at U.S. ports and in U.S. waters.

We would like to provide some brief background on MARPOL Annex VI for the Committee:

The treaty is the sixth annex to the International Convention for the Prevention of Pollution from Ships. It was adopted by the International Maritime Organization (IMO) in 1997 after five years of negotiation in which the United States played a leadership role. Annex VI sets limits on sulfur oxide (SOx) and nitrogen oxide (NOx) emissions from ship exhaust and prohibits deliberate emission of ozone depleting substances. The treaty also provides for the establishment, through the IMO, of Sulfur Emission Control Areas (SECAs) with stricter sulfur controls.

In order for the treaty to enter into force, 15 countries with at least 50 percent of world merchant tonnage needed to ratify. That threshold was met in May 2004 and the treaty entered into force in May 2005. This provided the incentive for other countries to ratify and, as of June 1 of this year, 35 countries with more than 70 percent of world tonnage are parties to the treaty, including most of the United States' major trading partners. A list of the parties is attached to my testimony.

Here in the United States, two important things happened regarding this issue in 2003:

- In January, the Environmental Protection Agency published a Final Rule establishing vessel air emission standards for U.S.-flag vessels. The standards mirrored Annex VI standards. The Rule also committed EPA to establish stricter standards for U.S.-flag ships by 2007 and to seek comment on its potential regulatory authority over non-U.S. flag ships at the same time. EPA also recognized in the Rule that the Administration was seeking ratification of Annex VI and that they (EPA) would work at the IMO to develop stricter standards that would be accepted and applied internationally to all ships.
- In May, the Bush Administration sent Annex VI to the Senate for its advice and consent. This was done with the full support and encouragement of the maritime industry. The Administration also began an interagency process to draft implementing legislation for the treaty.

These two efforts were not coincidental. The Administration recognized the need for an international solution to this issue.

It remains an open legal question as to the scope of EPA's authority to regulate engine emission standards for foreign-flag ships, which make over 95 percent of the international vessel calls at U.S. ports. Accordingly, if the United States wishes to have clear and certain legal authority over ships of all registries, and have a meaningful impact on air quality in our ports and waters, we must ratify MARPOL Annex VI.

A. MARPOL ANNEX VI RATIFICATION

As I stated earlier, the Senate gave its advice and consent to ratification of MARPOL Annex VI this past April. However, the Administration has made it clear that it will not deposit the U.S. instrument of ratification with the IMO until implementing legislation to amend U.S. law is enacted.

Work has begun at the IMO to develop stricter SOx and NOx standards and to regulate emission of Particulate Matter (PM) and Volatile Organic Compounds (VOC). While the United States is participating in that process, we will have no real influence over final decisions, and no vote for or against the new standards, unless the U.S. is a party to the treaty. This will not be good for the maritime industry or for the environment.

U.S. ratification of MARPOL Annex VI is essential to enable the United States to work with our trading partners, who have brought this treaty into force, to strengthen the treaty and establish meaningful international vessel air emission standards for the first time.

Mr. Chairman, we fully recognize that the current standards in Annex VI need to be updated in order to bring about meaningful improvement in vessel emissions. It is important for the U.S. government to be an effective participant in developing those new international standards, which can only happen if our trading partners know that we will implement them as a party to the treaty; and it will be considerably easier to implement and enforce new standards through this international instrument for the thousands of vessels of all flags calling at U.S. ports than through unilateral regulation.

B. ANNEX VI IMPLEMENTING LEGISLATION

The Council and our coalition partners have supported the Administration's draft implementing legislation for Annex VI which was sent to Congress last October. This draft was achieved after extensive interagency discussion and compromise. We have reviewed your Committee's proposed amendments to that draft bill, which primarily relate to agency jurisdiction, and are neutral on them. Our industry has consistently remained neutral on matters of government agency jurisdiction in environmental matters. Our concern, however, is that such jurisdictional issues could delay the enactment of this important legislation and thus the U.S. ratification of MARPOL Annex VI.

We urge the subcommittee to send this bill to the full Committee as soon as possible so that it may take action before the August recess. We believe it is important to leave time to resolve any differences which may exist between the House and Senate or between the Congress and the Administration so that the legislation can be enacted this year and U.S. ratification of the treaty can be completed.

United States ratification of MARPOL Annex VI will establish international air emission standards for all commercial vessels in U.S. ports and waters for the first time

and will provide a structure for early improvement of those standards with full U.S. participation. It will meet environmental objectives that are not achievable through unilateral regulatory action, such as the establishment, through the IMO, of Sulfur Emission Control Areas in U.S. waters. It will regulate the maritime industry in a uniform, consistent manner regardless of a ship's registry. And it will reestablish U.S. leadership in international marine environmental matters.

III. BALLAST WATER

A. General Comments

The Council and the other members of the Shipping Industry Ballast Water Coalition strongly support a single, federal standard to govern ballast water discharges in order to avoid a patchwork of overlapping and conflicting federal and state programs. We support the implementation of the standards and framework contained in the IMO's International Convention for the Control and Management of Ships' Ballast Water and Sediments (IMO Convention), which is not yet in force. The United States and other countries are presently reviewing the Convention, with the goal of ratification and enactment of the necessary domestic implementing legislation. The Council's ultimate objective is to establish a reasonable international standard for ballast water management and treatment, with an appropriate review for technical feasibility and with a reasonable implementation regime.

In addition, of the several pending ballast water bills in Congress, the Ballast Water Management Act of 2005 (S. 363), currently being considered by the Senate, contains many provisions similar to and consistent with the basic structure of the IMO Convention. The Council and our ballast water coalition partners have expressed our support for the passage of S.363 in the Senate, in the hope that it would facilitate both houses of Congress agreeing on a mutually acceptable bill this year.

The federal government has long been interested in this issue, beginning with the National Aquatic Nuisance Pollution Control Act, as amended by the National Invasive Species Act of 1990, which mandated the creation of a broad multi-agency Aquatic Nuisance Species (ANS) Task Force, and designated the Coast Guard as the lead federal agency to address the problems surrounding the introduction of ANS through ballast water discharges. Acting on its own initiative, and in concert with other federal and state agencies and cooperative arrangements, the Coast Guard mandated a system of open-ocean ballast water exchange for all vessels, including those not traveling beyond the Exclusive Economic Zone. Currently, absent a technological breakthrough, the Coast Guard has been active in this field and has done what it can to address this issue with mid-ocean exchange.

However, other than mid-ocean ballast water exchange, already mandated by Coast Guard regulation, there are currently no proven environmentally sound methods of removing ANS from ballast water. The majority of ballast water treatment options are currently under development and can only be considered potentially available in the

future. Most ballast water technologies have only been tested under laboratory conditions. Only a few have undergone on-ship testing and the results have not been promising enough to merit wide-spread implementation. Even with efforts by industry and researchers, technology does not yet exist to effectively eliminate ANS from ballast water discharges.

Other methods currently used to prevent the discharge of ANS generate significant complications that will likely prevent successful sector-wide implementation. For example, shore reception facilities that process and treat ballast water present significant financial, logistical and technical challenges that may prevent their widespread use. Overall, experts in the field widely disagree on which ANS prevention technologies should ultimately be used. The confusion and disagreement in the expert community are a direct result of the lack of workable technological solutions.

The complexity of regulation in this area is increased by the existence of inconsistent state efforts. As discussed earlier, shipping is an international business and the regulation of shipping should also be an international issue. The international community is currently working from the IMO Convention and the U.S. standard should mirror this for international consistency. Even if the U.S. government were not to agree with everything contained in the IMO Convention, regulation of the ballast water issue should be conducted at the federal, not state, level. States should continue to have the right to enforce federal standards through state penalty regimes, but continuation of the current patchwork of state regulations is not beneficial to the shipping industry or to the environment.

Vessels are already in compliance with federal mid-ocean exchange regulations. To obtain significantly greater environmental benefits will require the development of new ballast water technology. That technology will have to be commercially available in order for it to be installed on vessels worldwide. Manufacturers will not take the business risks necessary to begin commercial production of such treatment systems, however, until they know what discharge standards those systems have to meet. Enactment of federal legislation will clarify the standard that industry must meet, and by doing so should accelerate efforts to develop and implement a workable solution.

Lastly, the Council believes that any legislation should be the exclusive federal program by which ballast water is regulated. As the Committee is no doubt aware, there is a pending federal lawsuit in the Northern District of California that questions whether EPA correctly exempted ballast water discharges from coverage under the Clean Water Act and, by extension, the National Pollutant Discharge Elimination System (NPDES). Legislation to provide a clear, uniform federal system for addressing this issue would be welcomed.

B. Comments on the Ballast Water Management Act of 2006

We commend the Committee for its leadership and interest in ballast water and aquatic nuisance species. We can provide the Committee staff with detailed section-by-section comments at a later time, and hope the following more general comments on the draft legislation will be helpful.

Section 4(b). National Regulations: We commend the Committee for including a “no deviation” clause.

Section 7. National Ballast Water Discharge Standards: The Council generally supports this most-important section of the proposed bill. First, the Council endorses the technology review process contained in paragraph (a). Second, the Council concurs with the Committee’s benchmark review standard and the basic review criteria contained in paragraph (b). Third, the Council applauds the language contained in paragraph (f) regarding existing equipment and the ability for it to remain on board for the shorter of the life of the equipment or vessel. Fourth, we support the coastwise trade limitation found in paragraph (h)(2).

One suggested change would be to bring some of the other legislative text into closer alignment with the IMO Convention, particularly in regard to sections on distinctions between vessels (paragraph (b)(1)(B)), additional standards (paragraph (c)) and applicability of standards (paragraph (h)). The Committee may also wish to consider adopting the discharge standard contained in the IMO Convention. This, of course, could be done during the regulatory process, but the Council suggests it be clarified here to avoid any unnecessary later confusion.

One larger issue is the absence of either state or Clean Water Act preemption language. The purpose of this language should be to clearly establish a single, national standard and an exclusive source for regulation. The Council suggests that language be inserted in Section 7 to make clear that this legislation supersedes any state law regarding ballast water and that this legislation is the sole federal law regarding the regulation of ballast water. It should be clearly drafted, while still protecting the rights of states to enforce their own penalty regimes should they wish to do so, so long as they too are consistent with the federal regime.

IV. CONCLUSION

We thank the Committee for the opportunity to present our views on vessel air emissions and ballast water management, and again commend the Committee for its leadership on these two important marine environmental issues.

Member Companies of the World Shipping Council

APL
A.P. Møller-Maersk (including Maersk Line and Safmarine)
Atlantic Container Line (ACL)
China Ocean Shipping Company (COSCO)
China Shipping Group
CMA-CGM Group
Compania Sud-Americana de Vapores (CSAV)
Crowley Maritime Corporation
Dole Ocean Cargo Express
Evergreen Marine Corporation (including Italia Marittima and Hatsu Marine)
Great White Fleet
Hamburg Sud (including Alianca)
Hanjin Shipping Company
Hapag-Lloyd Container Line (including CP Ships)
Höegh Autoliners, Inc. (formerly HUAL North America, Inc.)
Hyundai Merchant Marine Company
Kawasaki Kisen Kaisha Ltd. (K Line)
Malaysia International Shipping Corporation (MISC)
Mediterranean Shipping Company (MSC)
Mitsui O.S.K. Lines
NYK Line
Orient Overseas Container Line, Lt. (OOCL)
United Arab Shipping Company
Wan Hai Lines Ltd.
Wallenius Wilhelmsen Logistics
Yangming Marine Transport Corporation
Zim Integrated Shipping Services, Ltd

ANNEX VI RATIFICATIONS

IMO member states having ratified MARPOL Annex VI as of June 1, 2006

35 countries representing 70.53 percent of world merchant tonnage

Azerbaijan	Lithuania
Bahamas	Luxembourg
Bangladesh	Marshall Islands
Barbados	Norway
Belgium	Panama
Bulgaria	Poland
China	Saint Kitts and Nevis
Croatia	Samoa
Cyprus	Saudi Arabia
Denmark	Singapore
Estonia	Slovenia
Finland	South Korea
France	Spain
Greece	Sweden
Germany	Tuvalu
Italy	United Kingdom
Japan	Vanuatu
Liberia	